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2589-00009

French Camp
31314

1
2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION 9

5 In the Matter of :

6 Manthey Road Property
7 4599 Manthey Road
8 French Camp, California

9 Lyon Communities, Inc.

10 Respondent

11 Proceeding under Section 106 of the
12 Comprehensive Environmental Response,
13 Compensation and Liability Act of 1980,
14 as amended by the Superfund Amendments
15 and Reauthorization Act of 1986,
16 (42 U.S.C. §9606)

Order No. 89-09

17
18 I. Introduction and Jurisdiction

19 This Order is issued to Lyon Communities, Inc.

20 ("Respondent") pursuant to the Comprehensive Environmental
21 Response, Compensation and Liability Act of 1980, as amended by
22 the Superfund Amendments and Reauthorization Act of 1986, 42
23 U.S.C. Section 9601 et seq., ("CERCLA"), by authority delegated
24 to the Administrator of the United States Environmental Protec-
25 tion Agency ("EPA") and redelegated to the EPA Regions.

26 The Director of the Hazardous Waste Management Division, EPA
27 Region 9, has determined that there may be an imminent and sub-
28 stantial endangerment to the public health, welfare or the en-
29 vironment because of the release and/or threatened release of
30 hazardous substances from the Manthey Road Property, 4599 Manthey
31 Road, French Camp, California ("facility" or "site").

32 The EPA has designated an On-Scene Coordinator ("OSC") for

1 the site, pursuant to 40 C.F.R. Part 300.

2 II. Findings of Fact

3 A. BACKGROUND

4 1. The Manthey Road Property is an abandoned asbestos waste
5 disposal site located at 4599 Manthey Road, French Camp, Fresno
6 County, California. The facility is comprised of approximately
7 five (5) acres at the southwest corner of the intersection of
8 Wolf and Manthey Roads. In 1966, asbestos manufacturing wastes
9 and asbestos pipe reject materials were used as landfill
10 materials and disposed of at the facility.

11 2. Respondent, Lyon Communities, Inc., is the current owner
12 of the property.

13 3. This "C" shaped site is surrounded by agricultural land
14 to the north, south and west. A residential parcel lies within
15 the open part of the "C" facing east toward Manthey Road, within
16 100 feet of the site. The San Joaquin County General Hospital
17 lies less than one mile to the south. There is a population of
18 1,000 persons within one mile of the site and a population of
19 27,802 persons within four miles of the site. One subsistence
20 farm is located adjacent to the site. Residential development is
21 proposed on the adjacent property. Interstate Highway 5 is in
22 close proximity to the site.

23 4. On March 22, 1988, the California Department of Health
24 Services ("DHS") conducted an inspection of the site and on March
25 28, 1988, requested assistance from EPA to mitigate the threat
26 posed by the site. On April 6, 1988, EPA performed a preliminary
27 assessment of the site. Soil auger drilling conducted by EPA
28 confirmed the presence of asbestos to a depth of at least four

1 feet. Nine (9) samples taken showed levels of up to 70%
2 chrysotile asbestos. As a result of EPA's findings, and as a tem-
3 porary mitigation action, DHS applied a polymer seal at the site
4 on May 23, 1988. The polymer seal was applied to the soil sur-
5 face for the purpose of binding the asbestos fibers to the soil
6 and to each other.

7 B. ENDANGERMENT

8 5. The presence of asbestos at the site poses a threat of
9 continuing airborne release of asbestos into the environment.
10 The presence of asbestos was first confirmed on April 15, 1985,
11 through soil borings at the site taken as part of a soil inves-
12 tigation conducted for Pacific Telephone. A sample analyzed at
13 that time contained 10 to 20% chrysotile asbestos to a depth of
14 three (3) feet. In April, 1986, five (5) soil samples were
15 taken. Analysis showed 20 to 40% chrysotile asbestos. In April,
16 1988, EPA took nine (9) samples from the site. Three (3) samples
17 showed chrysotile asbestos up to 70%. Analysis was by polarized
18 light microscopy.

19 6. Asbestos is a known human carcinogen. Prolonged inhala-
20 tion can cause cancer of the lung, pleura and peritoneum. Clini-
21 cally, the most striking sign is shortness of breath of gradually
22 increasing intensity, often associated with a dry cough. Where
23 the disease is far advanced, there are usually large areas of
24 fibrosis with emphysematous changes.

25 7. The site poses a threat to nearby residents due to the
26 potential exposure to airborne asbestos which may be entrained
27 from exposed surfaces. Exposure may also occur from direct con-
28 tact with the soil and subsequent ingestion of the asbestos

1 fibers. Persons travelling in vehicles in the area may also be
2 subject to exposure from airborne fibers.

3 III. Conclusions of Law

4 A. Respondent is a "person" as defined in Section 101(21) of
5 CERCLA, 42 U.S.C. Section 9601(21).

6 B. The property located at 4599 Manthey Road, French Camp,
7 California is a "facility" as defined in Section 101(9) of
8 CERCLA, 42 U.S.C. Section 9601(9).

9 C. Asbestos is a "hazardous substance" as defined in Sec-
10 tion 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

11 D. The presence of hazardous substances on the site and the
12 potential for those substances to become airborne due to soil
13 disturbance or entrainment by the wind constitutes a "release" or
14 "threatened release" of hazardous substances into the environment
15 as defined in Section 101(22) of CERCLA, 42 U.S.C. Section
16 9601(22).

17 E. Respondent is a "responsible party" as defined in Sec-
18 tion 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

19 IV. Determinations

20 Based on the Findings of Fact and Conclusions of Law, the
21 Director, Hazardous Waste Management Division, EPA Region 9, has
22 made the following determinations:

23 A. The release or threatened release of hazardous sub-
24 stances, pollutants or contaminants from the site may present an
25 imminent and substantial endangerment to the public health, wel-
26 fare, or the environment.

27 B. In order to prevent or mitigate immediate and sig-
28 nificant risk of harm to human health and the environment, it is

1 necessary that actions be taken immediately to contain and
2 prevent the release and potential release of hazardous sub-
3 stances, pollutants or contaminants from the site.

4 C. The removal measures required by this Order are consis-
5 tent with the National Contingency Plan, 40 C.F.R. Part 300.

6 V. Order

7 Based upon the Findings of Fact, Conclusions of Law and
8 Determinations, EPA hereby Orders the Respondent to implement the
9 following measures under the direction of EPA's On-Scene Coor-
10 dinator:

11 A. Within twenty-one (21) days of the effective date of
12 this Order, Respondent shall submit a work plan and schedule of
13 work for the permanent mitigation of the hazard posed by the
14 presence of asbestos at the site.

15 B. Upon written approval by EPA, Respondent shall implement
16 the work plan according to the schedule approved by EPA.

17 C. Respondent shall notify EPA at least five (5) working
18 days prior to conducting any work at the site. Notification
19 shall be made by telephone to Dan Shane, EPA On-Scene Coor-
20 dinator, at (415) 974-8361. Verbal notification shall be fol-
21 lowed by written confirmation within two (2) days of the date of
22 verbal notice.

23 VI. Compliance With Other Laws

24 A. Respondent shall comply with all applicable or relevant
25 and appropriate federal, state and local laws and regulations in
26 carrying out the terms of this Order.

27 B. Respondent shall comply with all applicable requirements
28 of the Occupational Safety and Health Act of 1970, including the

1 requirements found at 29 C.F.R. Section 1910 et seq.

2 VII. On-Scene Coordinator

3 EPA has appointed an On-Scene Coordinator ("OSC") for the
4 Site who has the authority vested in the OSC by 40 C.F.R. Part
5 300, et seq. The OSC for the site for the purposes of this Order
6 is:

7 Dan Shane
8 United States Environmental Protection Agency, Region 9
9 215 Fremont Street
San Francisco, California 94105
(415) 974-8361

VIII. Submittals

10 All submittals and notifications to EPA required by
11 this Order shall be made to:

12 Dan Shane
13 On-Scene Coordinator
14 United States Environmental Protection Agency, Region 9
215 Fremont Street
15 San Francisco, California 94105

16 Copies of all submittals and notifications shall be sent to
17 Jim Hanson, at the above-stated address, attention T-4-4.

18 All approvals and decisions of EPA made regarding the sub-
19 mittals and modifications shall be communicated to Respondent by
20 the OSC or the Director, Hazardous Waste and Management Division
21 or his designee. No informal advice, guidance, suggestions, or
22 comments by EPA regarding reports, plans, specifications,
23 schedules, or any other matter will relieve Respondent of its
24 obligation to obtain written approvals as required by this Order.

IX. Access

25 Respondent shall provide EPA employees and other EPA repre-
26 sentatives with complete access to the facility at all times.
27 Nothing in this Order limits any access rights that EPA or other
28

1 agencies may have pursuant to law.

2 X. Endangerment During Implementation

3 The Director, Hazardous Waste Management Division, EPA
4 Region 9, may determine that acts or circumstances (whether re-
5 lated to or unrelated to this Order) may endanger human health,
6 welfare or the environment and may order the Respondent to stop
7 further implementation of this Order until the endangerment is
8 abated.

9 XI. Government Not Liable

10 The United States Government and its employees and other
11 representatives shall not be liable for any injuries or damages
12 to persons or property resulting from the acts or omissions of
13 Respondent, the Respondent's employees or other representatives
14 caused by carrying out this Order. For the purposes of this Or-
15 der, the United States Government is not a party to any contract
16 with the Respondent.

17 XII. Noncompliance

18 A. A willful violation or failure or refusal to comply
19 with this Order may subject Respondent to a civil penalty of up
20 to \$25,000 per day in which the violation occurs or failure to
21 comply continues, pursuant to the provisions of Section 106(b)(1)
22 of CERCLA, 42 U.S.C. Section 9606(b)(1). Failure to comply with
23 this Order without sufficient cause may also subject Respondent
24 to punitive damages of up to three times the total costs incurred
25 by the United States for site response pursuant to Section
26 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

27 B. EPA may take over the response action at any time if
28 EPA determines that the Respondent is not taking appropriate ac-

1 tion. EPA may order additional actions it deems necessary to
2 protect public health, welfare, or the environment.

3 XIII. Opportunity to Confer

4 Respondent may request a conference with the Director, Haz-
5 arduous Waste Management Division, EPA Region 9, or his staff to
6 discuss the provisions of this Order. At any conference held
7 pursuant to Respondent's request, Respondent may appear in person
8 or by counsel or other representatives for the purpose of
9 presenting any objections, defenses or contentions that Respon-
10 dent may have regarding this Order. If Respondent desires such a
11 conference, Respondent must make a request orally within one
12 working day of receipt of this Order, and confirm the request in
13 writing immediately. A conference does not alter the effective
14 date of the Order.

15 XIV. Parties Bound

16 This Order shall apply to and is binding upon the Respon-
17 dent, and any of its officers, directors, agents, employees, con-
18 tractors, successors, and assigns.

19 XV. Notice of Intent to Comply

20 Within one working day of receipt of this Order, Respondent
21 shall orally inform EPA of its intent to comply with the terms of
22 this Order. The oral notice shall be confirmed within two (2)
23 working days by written notice to the OSC with a copy to the
24 Director. Failure to timely notify EPA of the Respondent's in-
25 tent to comply fully will be construed by EPA as a refusal to
26 comply.

27 XVI. Notice to State

28 Notice of the issuance of this Order has been given to the

1 State of California. EPA will consult with the California
2 Department of Health Services and the San Joaquin County Health
3 District, as appropriate.

4 XVII. Effective Date

5 Notwithstanding any conferences requested pursuant to the
6 provisions of this Order, this Order is effective on the date of
7 execution by the Director, Hazardous Waste Management Division,
8 EPA Region 9.

9
10 IT IS SO ORDERED on this 16 day of May, 1989.

11 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

12
13 by: Jeff Zerkson
14 Jeff Zerkson
15 Director, Hazardous Waste Management Division
EPA, Region 9

16 Contacts:

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28